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MINES AND MINING

LAWS OF UTAH



1913

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MINES AND MINING

1495. Extent. No location to be made until discovery of vein. A mining claim, whether located by one or more persons, may equal, but shall not exceed, 1,500 feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located. Any lode mining claim may extend 300 feet on each side of the middle of the vein at the surface except where adverse rights render a lesser width necessary. The end lines of each claim must be parallel. Am'd '99, p. 26.

Discovery monument, where placed, § 1496, and note.

Notice of location, contents, description, etc., § 1496, and notes.

Construction of notice of location, note to § 1496.

Annual labor, note to § 1500.

Local laws and customs. Congress has given the local laws and customs of miners the force and effect of laws, so far as they are not in conflict with any superior law.

McCormick v. Varnes, 2 U. 355.

Supplemental state legislation. The right of a state to pass acts supplementing the mining act of congress in respect to the location, etc., of mining claims is recognized by § 2394, R. S. U. S.

Copper Globe M. Co. v. Allman, 23 U. 410; 64 P. 1019.

In re Monk, 16 U. 100; 50 P. 810.

Ownership of surface and of mineral rights may be separate. The surface of mineral lands may be owned by one person and the mineral underneath by another, each with an indefeasible title; when so owned they constitute separate corporeal hereditaments with all the incidents of separate ownership, and the surface land may be partitioned the same as where there is no mineral under it.

Smith v. Jones, 21 U. 270; 60 P. 1104.

Tunnel site; failure to prosecute work. The provisions of § 2323, R. S. U. S., apply to one who locates a tunnel for discovery purposes as well as for development purposes, but failure to prosecute work on such tunnel for six months, works an abandonment of the right to all undiscovered veins on the line of such tunnel.

Fissure M. Co. v. Old Susan M. Co., 22 U. 438; 63 P. 587.

DISCOVERY, NECESSITY FOR:

Discovery and appropriation are the sources of title to mining claims, and development by working is the condition of continued possession.

O'Reilly v. Campbell, 116 U. S. 418.

Discovery may be at any point within the boundaries of the claim. *Harrington v. Chambers*, 3 U. 94; 1 P. 362; affirmed 111 U. S. 350.

Discovery at or near monument. Discovery must be made before location, and discovery monument must be erected in close proximity thereto.

Copper G. M. Co. v. Allman, 23 U. 410; 64 P. 1019.

Claim void if discovery not on free ground. The location of a mining claim is void when its discovery point is placed within the lines of an existing valid claim.

Watson v. Mayberry, 15 U. 265; 49 P. 479.

Argentine M. Co. v. Benedict, 18 U. 183; 55 P. 559.

Reynolds v. Pascoe, 24 U. 219; 66 P. 1064.

Bunker H. M. Co. v. Pascoe, 24 U. 60; 66 P. 574.

Lavagnino v. Uhlig, 26 U. 1; 71 P. 1046; but see same case on appeal, 198 U. S. 443.

Lockhart v. Farrell, 31 U. —; 86 P. 1077.

One who located a mining claim, based on a discovery within the limits of an existing location, was a trespasser, and his location was void, and the subsequent forfeiture of the senior claim for non-performance of annual labor did not give him any rights. (*Distinguishing Lavagnino v. Uhlig*, 198 U. S. 443.)

Lockhart v. Farrell, 31 U.—; 86 P. 1077.

Loss of discovery cured by new discovery. Where discovery is lost, by being included within the lines of a junior location, the senior claim does not thereby become invalid if a new discovery is made.

Silver City M. Co. v. Lowry, 19 U. 334; 57 P. 11; dismissed 179 U. S. 196.

DISCOVERY, WHAT CONSTITUTES:

Valid location of a mining claim may be made whenever the prospector has discovered such indications of mineral that he is willing to spend his time and money in following them, in the expectation of finding ore.

Harrington v. Chambers, 3 U. 94; 1 P. 362; affirmed 111 U. S. 350.

Hayes v. Lavagnino, 17 U. 185; 53 P. 1029.

Wilson v. Triumph M. Co., 19 U. 66; 56 P. 300.

One locating an abandoned claim may use the discovery of the former locator.

Hayes v. Lavagnino, 17 U. 185; 53 P. 1029.

Vein or lode defined.

Harrington v. Chambers, 3 U. 94; 1 P. 362; affirmed 111 U. S. 350.

Hayes v. Lavagnino, 17 U. 185; 53 P. 1029.

Grand Cent. M. Co. v. Mammoth M. Co., 29 U. 490; 83 P. 648.

There must be something beyond a mere guess on the part of the miner to authorize him to make a location which will exclude others from the ground, such as the discovery of the presence of the precious metals at the place where the notice of location is posted, or in such proximity to it as to justify a reasonable belief in the existence of a lode there.

Copper Globe M. Co. v. Allman, 23 U. 410; 64 P. 1019.

Vein matter must be mineralized. Rock or matter of any kind, in order to constitute a vein or lode within the meaning of the statute, must be metalliferous and contain such mineral value as will distinguish it from the country rock, especially where no well-defined walls appear.

Grand Cent. M. Co. v. Mammoth M. Co., 29 U. 490; 83 P. 648.

APEX RIGHTS:

Location should be along the vein. A location of a mining claim upon a lode or vein of ore should be laid along the same lengthwise of the course of its apex at or near the surface, as well under the mining act of 1866 as under that of 1872. If located otherwise, the location will only secure so much of the lode or vein as it actually covers.

Flagstaff Mining Co. v. Tarbet, 98 U. S. 463.

McCormick v. Varnes, 2 U. 355.

Prior to the act of congress of May 10, 1872, a locator was entitled to but one vein; since then he is entitled to all veins having an apex within his surface lines.

Blake v. Butte S. M. Co., 2 U. 54.

May follow vein on its dip. The owner of a vein located prior to May 10, 1872, in possession, may follow his vein on its dip into the unpatented ground of another.

Id.

The act of 1866 qualifies and enlarges the common law right by which miners hold their locations, to this extent only: that the owner of a mining claim may follow his lode or vein from the apex found within his surface ground, on its dip, to any depth, although in its downward course it may so far depart from a perpendicular as to enter the land adjoining; but he cannot go beyond or outside of his side lines on the course or strike of the vein.

McCormick v. Varnes, 2 U. 355.

Broad lode. The first locator, having the apex of a vein entirely within the surface lines of his claim for a portion of its length, and for the remaining portion partly within and partly without, and within the surface lines of another claim, but never entirely departing from such first location, owns the entire lode within the end lines of his claim.

Bullion-Beck Mining Co. v. Eureka Hill Mining Co., 5 U. 3; 11 P. 515.

See Lawson v. U. S. Min. Co.,—U. S.—decided Oct. 21, 1907.

Secret underground workings. The location of a vein or lode made upon the surface where the vein or lode finds its apex will not be defeated by the secret underground workings and possession by parties having no possession of or right to the surface embracing it.

Eilers v. Boatman, 3 U. 159; 2 P. 66; affirmed 111 U. S. 356.

A locator working subterraneously into the dip of the vein belonging to another locator who is in possession of his location is a trespasser and liable to an action for taking ore therefrom.

Flagstaff M. Co. v. Tarbet, 98 U. S. 463.

Locator presumed to own all ore within planes drawn vertically downward through boundary lines.

Grand Cent. M. Co. v. Mammoth M. Co. 29 U. 490; 83 P. 648.

Discovery might not be sufficient as an apex. What constitutes a discovery that will validate a location is a very different thing from what constitutes an apex to which attaches the statutory right to invade the possession of and appropriate the property which is presumed to belong to the adjoining owner.

Grand Cent. M. Co. v. Mammoth M. Co., 29 U. 490; 83 P. 648.

Burden on apex claimant. When the owner of an apex seeks to follow his vein on its dip into the land of another, the burden is on him.

Grand Cent. M. Co. v. Mammoth M. Co., 29 U. 490; 83 P. 648.

Red Wing M. Co. v. Clays, 30 U. 242; 83 P. 841.

U. S. PATENT; ADVERSE CLAIM:

What plaintiff must prove. In action for possession, plaintiff must prove discovery and a location according to U. S. and local laws.

Harrington v. Chambers, 3 U. 94; 1 P. 362; affirmed 111 U. S. 350.

Hayes v. Lavagnino, 17 U. 185; 53 P. 1029.

Copper Globe M. Co. v. Allman, 23 U. 410; 64 P. 1019.

Parties must rely upon their own strength. As proceedings on an adverse claim are had for the purpose of determining which of the parties is entitled to patent, each must rely on the strength of his own title and not on the weakness of that of his adversary.

Murray H. M. & M. Co v. Havenor, 24 U. 73; 66 P. 762.

Form of action. Sec. 2326, R. S. U. S., authorizes an adverse claimant to commence with an action at law or a suit in equity, as may be most appropriate, to determine right of possession.

Perego v. Dodge, 9 U. 3; 33 P. 221; affirmed 163 U. S. 160.

Parley's Park M. Co. v. Kerr, 3 U. 235; 2 P. 709; affirmed 130 U. S. 256.

Adverse proceedings authorized by § 2326, R. S. U. S., are not to determine the rights of the contestants to a patent, but to determine the right of possession of the disputed claim.

Lavagnino v. Uhlig, 26 U. 1; 71 P. 1046; affirmed 198 U. S. 443.

In an action to determine the right of possession of a lode mining claim, arising out of proceedings had in the U. S. land office, state statutes regulating generally actions for the recovery of real property have no application in view of the provisions of § 2326, R. S. U. S., relating to mining and providing for the filing of adverse claims.

Lily M. Co. v. Kellog, 27 U. 111; 74 P. 518.

Presumption when no adverse claim filed. Under § 2325, R. S. U. S., providing that it shall be presumed that there are no adverse claims to a mineral deposit for which application has been filed, unless they are filed within the sixty days during which notice of such application is required to be published, it will be conclusively presumed that one who fails to file an adverse claim within the prescribed time, has none.

Lavagnino v. Uhlig, 26 U. 1; 71 P. 1046; affirmed 198 U. S. 443.

No presumption when adverse claim filed. On an application for a patent to a mining claim, the land office, in the absence of the filing of an adverse claim, will indulge the presumption that no conflicting claims exist to the premises described in the application, but when an adverse claim is filed, the presumption does not arise.

Lockhart v. Farrell, 31 U. —; 86 P. 1077.

U. S. PATENT, EFFECT OF:

Mining claims are real property and pass by deed.
Houtz v. Gisborn, 1 U. 173.

Issuance presumes compliance with mining laws. A patent passes the government title to the surface and any veins beneath it not otherwise granted, and its issuance presumes a compliance with the mining law.

Kahn v. Telegraph Mining Co., 2 U. 174.

Subject to apex rights. Mining patents based upon locations made under the act of 1866 grant title to the ground mentioned therein, subject to the right of other locators to follow any other vein or lode held under locations made prior to the act of May 10, 1872.

Blake v. Butte Mining Co., 2 U. 54.

Patent subject to equities. A patent from the United States is the highest evidence of title, and ordinarily it cannot be varied, contradicted, nor controlled by evidence outside the patent; but after the United States has parted with its title and the individual has become vested with it, the equities subject to which he holds it may be enforced.

Kimball v. McIntyre, 3 U. 77; 1 P. 167.

May be avoided for mistake. A patent from the United States for mineral lands may be avoided in equity for mistake, or fraud and misrepresentation practiced upon the government.

Parley's Park Mining Co. v. Kerr, 3 U. 235; 2 P. 709; affirmed 130 U. S. 256.

Width of claim. A patent for a mining claim allowing a width of 600 feet is valid under the act of congress of 1872, where it is doubtful under the evidence whether the mining laws of the district prescribed a lesser width.

Id.

The decision of the land department of the United States that land is non-mineral, or is occupied, is conclusive on the courts when the patent issued in pursuance of such decision is collaterally attacked.

Ferry v. Street, 4 U. 521; 11 P. 571.

1496. Discovery monument. Notice of location; contents. The locator, at the time of making the discovery of such vein or lode, must erect a monument at the place of discovery, and post thereon his notice of location, which notice shall contain:

1. The name of the lode or claim;
2. The name of the locator or locators;
3. The date of the location;
4. If lode claim, the number of linear feet claimed in length along the course of the vein each way from the point of discovery; with the width on each side of the center of the vein, and the general course of the vein or lode, as near as may be, and such a description of the claim, located by refer-

ence to some natural object or permanent monument as will identify the claim;

5. If a placer or millsite claim, the number of acres or superficial feet claimed, and such a description of the claim or millsite located by reference to some natural object or permanent monument as will identify the claim or millsite. Am'd '99, p. 26.

No location before discovery of vein, § 1495, and note.

Discovery within lines of prior claim, note to § 1495.

Notice recorded within thirty days, § 1498, and note.

Destruction of notice, penalty. § 1535.

Fraudulently antedating notice. Fraudulently antedating notice of location of mining claim for purpose of defeating an actual locator thereon is a fraud against such rightful claimant and the government. Muldoon v. Brown, 21 U. 121; 59 P. 720.

Location by lessee invalid. Lessee not permitted to take advantage of defects in lessor's title and make adverse location.

Silver City M. Co. v. Lowry, 19 U. 334; 57 P. 11; dismissed 179 U. S. 196.

Bunker H. M. Co. v. Pascoe, 24 U. 60; 66 P. 574.

Reynolds v. Pascoe, 24 U. 219; 66 P. 1064.

Fraudulent relocation by agent.

Utah M. Co. v. Dickert, 6 U. 183; 21 P. 1002.

Argentine M. Co. v. Benedict, 18 U. 183; 55 P. 559.

U. S. deputy mineral surveyor cannot locate a mining claim.

Lavagnino v. Uhlig, 26 U. 1; 71 P. 1046; case affirmed 198 U. S. 443, though that point not passed on. (Contra held by S. C. of Nev. in Hand v. Cook, Nov. 1907.)

Location by alien not invalid. Where alien located mining claim and conveyed to a citizen, no rights of third persons having attached prior to conveyance, the conveyance vests title in the citizen.

Wilson v. Triumph M. Co., 19 U. 66; 56 P. 300.

Stewart v. G. & C. M. Co., 29 U. 443; 82 P. 475.

The rights of a citizen locator of mining ground and his subsequent grantees cannot be affected by the fact that his co-locator was an alien.

Strickley v. Hill, 22 U. 257; 62 P. 893.

The location of a mining claim by an alien is not void, but only voidable on a direct attack by the government.

Stewart v. G. & C. M. Co., 29 U. 443; 82 P. 475.

MARKING OF BOUNDARIES.

Sec. 2324, R. S. U. S., merely requires that locations shall be distinctly marked, so that their boundaries can be readily traced.

Victoria Mining Co. v. Haws, 7 U. 515; 27 P. 695; affirmed 160 U. S. 303.

The fact that the description in a notice of location calls for stakes, when in fact the monuments are trees cut off about three feet from the ground and blazed and squared, is immaterial.

Hanson v. Fletcher, 10 U. 266; 57 P. 480.

Three corners marked. A mining claim marked by a discovery monument on which is placed the notice of location, and by a stake at each of the three corners of the claim, and a monument at the center of each end line, leaving one corner of the claim unmarked, is sufficiently marked under § 2324, R. S. U. S.

Warnock v. De Witt, 11 U. 324; 40 P. 205.

Boundaries need not be exact. A locator of a mining claim, in marking his claim on the ground so that its boundaries can be readily traced, is not required to be exact in running the lines or in fixing the corners or other posts.

Eilers v. Boatman, 3 U. 159; 2 P. 66; affirmed 111 U. S. 356.

A fact that the location of a mining claim as marked on the ground is 300 feet longer and 50 feet wider than is allowed by law does not render the location void, where the excess was included through mistake.

Hanson v. Fletcher, 10 U. 266; 37 P. 480.

Stakes in accessible places. A claim is sufficiently marked on the ground where the stakes and monuments are set at accessible places, the inaccessible places being definitely referred to by courses and distances.

Eilers v. Boatman, 3 U. 159; 2 P. 66; affirmed 111 U. S. 356.

Brockbank v. Albion M. Co., 29 U. 367; 81 P. 863.

Monuments of abandoned claims may be used in making a new location of same ground.

Brockbank v. Albion M. Co., 29 U. 367; 81 P. 863.

Within thirty days location must be marked upon the ground; or at least before other rights intervene.

Copper Globe M. Co. v. Allman, 23 U. 410; 64 P. 1019.

Brockbank v. Albion M. Co., 29 U. 367; 81 P. 863.

Discovery or location monument is the initial point of the lode from which the boundaries of the claim are to be determined. It must be placed at or near place of discovery.

Copper Globe M. Co. v. Allman, 23 U. 410; 64 P. 1019.

CONSTRUCTION OF NOTICE.

Strict construction of notice. The location notice of a claim describing it as being "fifteen hundred feet in length on this ledge * * * and three hundred feet on each side of the center of location," and as running east three hundred feet and west twelve hundred feet "from monument," the ledge being "situated up near the head of the right hand fork of what is known as Tie Canyon, about five miles from" a certain railroad; held, insufficient.

Darger v. Le Sieur, 8 U. 160; 30 P. 363.

Id., 9 U. 192; 33 P. 701.

Liberal construction of notices. The construction of notice of location should be liberal, not technical; and the sufficiency of reference to natural object or permanent monument is a question of fact.

Ellers v. Boatman, 3 U. 159; 2 P. 66; affirmed 111 U. S. 356.
 Hanson v. Fletcher, 10 U. 266; 37 P. 480.
 Wilson v. Triumph M. Co., 19 U. 66; 56 P. 300.
 Fissure M. Co. v. Old S. M. Co., 22 U. 438; 63 P. 587.
 Farmington M. Co. v. Rhydney M. Co., 20 U. 363; 58 P. 832.
 Wells v. Davis, 22 U. 322; 62 P. 3.
 Bonanza M. Co. v. Golden Head M. Co., 29 U. 159; 80 P. 736.

Trees blazed and squared, rock monuments and the prospect hole are permanent objects, within the meaning of § 2324, R. S. U. S., requiring the notice of the location of a mining claim to describe the same by reference to some natural object or permanent monument.

Hanson v. Fletcher, 10 U. 266; 37 P. 480.

A tie to an adjoining claim is sufficient.

Wilson v. Triumph M. Co., 19 U. 66; 56 P. 300.

Tied to its own stakes. Notice of location held sufficient which ties the claim to little else than its own stakes.

Bonanza M. Co. v. Golden Head M. Co., 29 U. 159; 80 P. 736.

1497. Boundaries marked. Mining claims and millsites must be distinctly marked on the ground so that the boundaries thereof can be readily traced. Am'd 99, p. 26.

1498. Filing Copy of Notice. Fee. Within thirty days from the date of posting the location notice upon the claim, the locator or locators, or his or their assigns, must file for record in the office of the County Recorder of the county in which such claim is situated, if said claim be situated without and beyond an original mining district, a substantial copy of such notice of location. Such County Recorder shall charge and collect a fee of 50c for first folio, and for each addition folio, 20c; and, providing further, that where more than two locators sign the said notice of location, an additional fee of 10c shall be charged for each additional name, said fee shall be for filing, recording, indexing and abstracting such notice; provided, that such notice of location shall not be abstracted unless a subsequent conveyance affecting the same property be filed for record, when said notice shall be abstracted. (As amended 1909.)

Contents of notice, posting, etc., § 1496, and note.

Notice of location filed in duplicate with district recorder § 1503; fee 75c for each copy, § 1503.

No record necessary unless statute prescribes it. The notice of location of a mining claim need not be recorded, if, at the time of the location, the rules of the district which require recording have fallen into disuse, there being no statutory requirement that such notice should be recorded.

Victoria Mining Co. v. Haws, 7 U. 515; 27 P. 695; affirmed 160 U. S. 303.

Notice to be recorded within thirty days. The locator must, within thirty days, mark the boundaries of his claim substantially as indicated by the notice of location, and, within the time as required by § 1498, he must record a substantial copy of the notice of location with the county recorder.

Copper Globe M. Co. v. Allman, 23 U. 410; 64 P. 1019.

Immaterial unless other rights intervene. Though monuments are not all erected according to law within the thirty days, it is sufficient if the law is complied with before other rights have intervened. Monuments of prior lapsed location may be used to mark new location.

Brockbank v. Albion M. Co., 29 U. 367; 81 P. 863.

1499. Notice of assessment work being done. Every person or company owning a group of claims and doing the development or assessment work for said group at one point shall post a notice upon each claim at the discovery monument stating where such work is being done, and also post a notice at the entrance of the workings where said work is done, stating the names of the claims for which the work is done. Am'd '99, p. 27.

1500. Filing affidavit of work done. The owner of any quartz lode or placer mining claim who shall do or perform or cause to be done or performed the annual labor or improvements required by the laws of the United States, in order to prevent a forfeiture of the claim, must, within thirty days after the completion of such work or improvements, file in the office of the County Recorder in which the greater part of the mining district, in which such claim is located, is situated, his affidavit or an affidavit or affidavits of the person or persons who performed or directed such labor or made or directed such improvements, and shall file a duplicate thereof with the district mining recorder of the district in which said claim is situated, showing:

1. The name of the claim and where situated.
2. The number of days' work done and the character and value of the improvements placed thereon;
3. The date or dates of performing said labor and making said improvements, and number of cubic feet of earth or rock removed;
4. At whose instance or request said work was done or improvements made;
5. The actual amount paid for said labor and improvements, and by whom paid, when the same was not done by the owner or owners of said claim.

Such affidavits or duly certified copies thereof shall be prima facie evidence of the facts therein stated. Am'd '99, p. 27.

Fee for recording affidavits of labor, § 1506.

Notice of work performed for benefit of group, § 1499.

Failure to file affidavit not fatal. A claim on which the required labor has been performed is not open to relocation by failure to file affidavit required by this section.

Murray H. M. & M. Co. v. Havenor, 24 U. 73; 66 P. 762.

ANNUAL LABOR.

Relocation instead of annual labor. Held, that the owner of a lode claim, who has failed to do his annual assessment work, has the right to make a new location covering the same ground.

Warnock v. De Witt, 11 U. 324; 40 P. 205.

Where adverse possession held wrongfully, the rightful owner or locator is excused from doing the assessment work during the continuance of such adverse holding.

Utah Mining Co. v. Dickert & Meyers Sulphur Co., 6 U. 183; 21 P. 1002.

Victoria Mining Co. v. Haws, 7 U. 515; 27 P. 695; 160 U. S. 303.

Fraud of Agent. The attempt of an agent employed to do annual assessment work on a mining claim, after failure to do the work, to relocate the claim is a fraud on his principal.

Utah M. Co. v. Dickert, 6 U. 183; 21 P. 1002.

Argentine M. Co. v. Benedict, 18 U. 183; 55 P. 559.

Resumption by original owner. Where A. fails to perform his annual labor, and B. locates the ground and afterward abandons it; if A. then re-enters and begins work, his title is good as against C. who afterwards locates.

Kloppenstine v. Hays, 20 U. 45; 57 P. 712.

Rights of junior locator on abandonment by senior. Where there was a conflict between a senior and junior location and the senior later failed to perform his annual labor, does the ground in conflict inure to the junior without any further act on his part?

Lavagnino v. Uhlig, 198 U. S. 443; same case, 26 U. 1; 71 P. 1046.

Contra, Lockhart v. Farrell, 31 U.—; 86 P. 1077.

ON GROUP OF CLAIMS:

Work done outside of a mining claim, if done for the purpose and as a means of developing the same, is as available for holding the claim as if done within the boundaries of the claim itself. One general system of work may be devised, well adapted and intended to develop several contiguous claims, and when such is the case, work in furtherance of the system is work on the claims intended to be developed by it.

Harrington v. Chambers, 3 U. 94; 1 P. 362; affirmed, 111 U. S. 350.

Properly left to the jury. Where the testimony tends to show the consolidation of a group of claims for development and working purposes and that the required amount of work was done on one claim for all, the question of whether work on one would inure to the benefit of all was properly left to the jury.

Wilson v. Triumph M. Co., 19 U. 66; 56 P. 300.

Kloppenstine v. Hays, 20 U. 45; 57 P. 712.

Wells v. Davis, 22 U. 322; 62 P. 3.

Finding that work was beneficial sustained. Where the testimony tends to show that respondent's mining claims were consolidated or worked for development purposes; that work on the tunnel and shafts was done to apply on the respective claims; that respondent had an interest in all of these claims, and that the development work was a benefit to all the claims, the testimony is sufficient to sustain the finding.

Fissure M. Co. v. Old S. M. Co., 22 U. 438; 63 P. 587.

1501. Reorganization of mining districts. Mining districts may be organized, and all existing districts may be reorganized and the rules and regulations of the said mining district shall govern the said district according to the laws of the United States, in cases where a district organization is desired; provided, that the nearest boundary line of any mining district shall not be within ten miles from the county recorder's office of any county. '99, p. 27.

1502. Copying records. Expense. Upon application of the district mining recorder of any mining district to the board of county commissioners of the county having in custody the records of the said mining district, the said board of county commissioners shall cause the records of such district to be copied by the county recorder, and shall cause all records of documents pertaining to district mining records, recorded since June 4, 1896, up to the time of delivery, to be recorded in the original records of the mining district in which the property is situated, and the original records, when so amended, shall be delivered to such district mining recorder. The copy so made shall remain in the office of the County Recorder, and shall be considered as the original record. One-half of the expense of copying such records shall be paid out of the county treasury and one-half shall be paid out of the state treasury.

R. S. '98, § 1506; '99, p. 27.

By the provisions of § 1502, R. S. 1898 (now § 1506x2, as amended) mining records were transferred from district mining recorder's to county recorder's office.

1503. Duplicate notice of location. Fee. Penalty. It shall be the duty of every district mining recorder to require every person depositing for record a notice of location to make a duplicate copy thereof, which copy said mining recorder shall carefully compare with the original and mark "duplicate" and endorse thereon his name, and the date and hour of filing in his office of the original. He shall, at the time of filing the duplicate notice with the original, collect, in addition to his own fee, the fee for the County Recorder for recording such duplicate. Said fee to be computed at the rate of 50c for first

folio, and for each additional folio, 20c; and, providing further, that where more than two locators sign the said notice of location, an additional fee of 10c shall be charged for each additional name. He shall immediately deposit the duplicate copy with the County Recorder of the county in which the greater part of the said mining district is located for record, or forward the same to him by mail or express, or in such other manner as will insure safe transit and delivery. The fee computed as hereinbefore described, shall accompany the duplicate. The County Recorder shall record said duplicate with the endorsements thereon for said fee. The record of said duplicate notice in the office of the County Recorder shall be considered an original record. Every person neglecting or refusing to comply with any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding \$300 or by imprisonment in the county jail, not exceeding six months, or by both such fine and imprisonment. Am'd 1909.

Fees of district mining recorder, § 990.

Notice to be recorded with county recorder, § 1498.

1504. Certified copies to be received in evidence. Copies of notices of location of mining claims, millsites, and tunnel sites heretofore recorded in the records of the several mining districts, and copies of the mining rules and regulations in force in the several mining districts, in like manner recorded, heretofore duly certified by the mining recorder, shall be receivable in all tribunals and before all officers of this state as prima facie evidence.

R. S. '98 § 1503; '99, p. 28.

District recorder to make certified copies, § 1506x1.

1505. Id. By county recorder. Where books, records, and documents pertaining to the office of district mining recorder have been or shall hereafter be deposited in the office of any county recorder of this state, such county recorder is authorized to make and certify copies therefrom, and such certified copies shall be receivable in all tribunals and before all officers of this state in the same manner and to the same effect as if such records had been originally filed or made in the office of the county recorder.

R. S. '98, § 1504; '99, p. 28.

County recorder to receive records, § 1506x2.

1506. County recorder to record rules. Certified copies. It shall be the duty of each county recorder to record the min-

ing rules and regulations of the several mining districts in his county without fee, and certified copies of such records shall be received in all tribunals and before all officers of this state as prima facie evidence of such rules and regulations, and it shall be his duty to record, index, and abstract all mining location notices presented for record, for a fee not to exceed seventy-five cents for each notice, and to file and index all affidavits of labor presented for filing affecting one mining claim, for a fee not to exceed twenty-five cents; provided that when an affidavit of labor contains the name of more than one mining claim, an additional fee of ten cents shall be charged for each additional claim named therein.

R. S. '98, § 1501; '99, p. 28.

Notice of location to be recorded for 75c, §§ 1498, 1503.

District recorder to collect for recording duplicate copies, § 1503.

1506x. Recorder of mining district to give bond. The recorder of each mining district shall take the oath of office and give bond with sureties in the penal sum of \$1,000. Such bond must be approved by the district judge and filed in the office of the County Clerk of the county in which the greater part of the said mining district is located. Where the recorder of any mining district appoints a deputy, the recorder and his bondsmen shall be responsible for the official acts of such deputy.

'99, p. 29.

1506x1. District recorder to make copies. It shall be the duty of the recorder of a mining district, upon request and payment or tender of the fees therefor, to make and deliver to any person requesting the same, duly certified copies of any records in his custody; and for failure so to do, or for receiving larger fees for any such service than those provided, he shall be deemed guilty of a misdemeanor.

'99, p. 29.

Certified copies by district recorder, § 1504.

1506x2. Vacancy. County recorder to receive records. Whenever there is a vacancy in the office of recorder of any mining district, or the person holding such office shall remove from the district, leaving therein no qualified successor in office; or whenever from any cause there is no person in such district authorized to retain the custody and give certified copies of the records, it shall be the duty of the person having custody of the records to deposit the same in the office of the county recorder of the county in which such mining district or the greater part thereof is situated, and the county recorder shall receive such records, and is hereby authorized to make

and certify copies therefrom, and such certified copies shall be received in evidence in all courts and before all officers and tribunals. The production of a certified copy so made shall be, without other proof, evidence that such records were properly in the custody of the county recorder.

R. S. '98 § 1502; '99, p. 29.

Certified copies by county recorder from district recorder's records, §1505.

Transfer to county recorder; law constitutional. Sec. 8., chap. 36, laws 1897, providing that records of mining claims shall be kept by the county recorder, and providing for the transfer and delivery of records kept by district recorders, is not in conflict with Con. art. 6, sec. 23, which requires that "no bill shall be passed containing more than one subject," etc.

Such a law is not in conflict with § 2324, R. S. U. S., authorizing mining districts to make regulations governing the manner of recording, etc.

In re Monk, 16 U. 100; 50 P. 810.

1535. Interfering with notices, stakes, persons in possession, or records. Any person or persons who shall wilfully or maliciously tear down or deface a notice posted on a mining claim, or take up or destroy any stake or monument marking any such claim, or interfere with any person lawfully in possession of such claim, or who shall alter, erase, deface, or destroy any record kept by a mining recorder, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$25, nor more than \$100, or by imprisonment for not less than ten days, nor more than six months, or by both such fine and imprisonment. Justices of the peace shall have jurisdiction of such offenses.

Malicious injury to property, § 4430.

Defacing U. S. monuments, § 4436.

1536. Wrongful taking of ores. Damages. Any person wrongfully entering upon any mine or mining claim, and carrying away ores therefrom, or wrongfully extracting and selling ores from any mine, shall be liable to the owner or owners of such ore for three times the value thereof; and should the plaintiff file his affidavit that the defendant did unlawfully take ores, the defendant may be arrested and held to bail, as in cases for the recovery of the possession of personal property unjustly detained.

1537. (Repealed, '99, p. 30.)

1538. Inclosing shaft. Any person that has sunk or shall sink a shaft or well on the public domain, or commons, for any purpose, shall inclose such shaft or well with a substantial curb or fence which shall be at least four and a half feet high.

1539. Id. Pits. Slack coal burning. The owner, lessee, or agent of any mine, who, by working such mine, has caused, or may hereafter cause, the surface on the public domain, commons, highway, or other lands to cave in and form a pit in which persons or animals are likely to fall, shall cause such cave or sink to be filled up, or to be securely fenced with a good, lawful fence; and if he has heaped or piled, or shall hereafter heap or pile, slack coal on the surface, and such slack coal shall take fire and endanger the life or safety of any person or animal, he shall cause the fire to be extinguished or the burning coal to be inclosed with a sufficient fence.

1540. Penalty. Any person failing to comply with the provisions of this chapter shall be deemed guilty of a misdemeanor, and shall be liable for all damages.

1540x. Certain mines to have fire protection. All mines having but one exit, and the same covered with the building containing the mechanical plant, furnace room, or blacksmith shop, shall have fire protection. Where steam is used, hose of sufficient length to reach the farthest point of the plant shall be attached to feed pump or injector, and the same kept ready for immediate use. In mines where water is not available, chemical fire extinguishers or hand grenades shall be kept in convenient places for immediate use, and it shall be the duty of any owner or operator of a mine in the state of Utah to provide fire protection as mentioned in this section, by July 1, 1901. Any person or corporation who shall refuse or neglect to comply with the provisions of this section shall be guilty of a misdemeanor.

01, p. 150.

PROFT
READY

1540x1. Certain shafts to be provided with safety cages. It is unlawful for any person or corporation to sink any vertical shaft, where mining cages are used, to a greater depth than 200 feet, unless the shaft is provided with an iron bonneted safety cage to be used in lowering and hoisting employes, or any other person. The safety apparatus, whether consisting of eccentrics, springs, or other device, must be securely fastened to the cage, and of sufficient strength to hold the cage loaded at any depth to which the shaft may be sunk. The iron bonnet must be made of boiler sheet iron of good quality, at least three-sixteenths of an inch in thickness, and

must cover the top of the cage in such manner as to afford the greatest protection to life and limb from any debris or anything falling down the shaft. Any violation of this section is punishable by a fine of not less than \$200 nor more than \$500, the same to be paid into the county treasury of the county in which the case is tried. '01, p. 151.

1540x2. Storage of powder at metalliferous mines. It

shall be unlawful for any mining company, corporation, or individual mine owner employing more than ten men at any one time, to have stored at any shaft house, or covering over any adit, incline, or tunnel, connected with a metalliferous mine or within the underground workings of any such mine, stopes, or drifts, at any one time, more than enough powder or other high explosives to do the work for each twenty-four hours. Any violation of this section shall be punished by a fine of not less than \$100, nor more than \$1,000. '03, p. 8.

1540x3. Supplies and medicines to be accessible. At all mines in the state of Utah where ten or more men are employed, it shall be the duty of the operator or owners thereof to keep readily accessible a properly constructed stretcher, a woolen blanket, a water-proof blanket and a supply of linseed oil, antiseptic gauze, carbolated vaseline, sponges, soap, liniment, carbolic acid, rubber bandages, suitable towels and wash basins, all for the comfort and treatment of anyone injured in such mine. '07, p. 34.

Stretchers to be kept at all mines, § 1514.

1540x4. Penalty. Any wilful neglect, refusal, or failure to do the things required to be done by the preceding section, or any attempt to obstruct or interfere with the complying with the provisions of this chapter, shall be deemed a misdemeanor, punishable by a fine in any sum less than \$300, or by imprisonment in the county jail not to exceed six months, or by both such fine and imprisonment. '07, p. 34.

LABOR.

1337. In mines and smelters. The period of employment of working men in all underground mines or workings, and in smelters and all other institutions for the reduction or refining of ores or metals, shall be eight hours per day, except in cases of emergency, where life or property is in imminent danger. Any person, body corporate, agent, manager, or employer who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor.

Authorized by Con. art. 16, sec. 6.

This law held to be constitutional.

State v. Holden, 14 U. 96; 46 P. 1105.

Ex parte Holden, 14 U. 71; 46 P. 756; affirmed 169 U. S. 366.

No recovery for overtime. The provisions of this section and chap. 72, p. 219, laws 1896, apply with equal force to employer and employe, and a person who works for another in a mill or reduction works more than eight hours per day cannot recover on a quantum meruit for his services during the overtime.

Short v. Bullion B. & C. M. Co., 20 U. 20; 57 P. 720.

EMPLOYMENT OF FEMALES AND CHILDREN.

1338. In mines and smelters forbidden. It shall be unlawful for any person, firm, or corporation to employ any child under fourteen years of age, or any female, to work in any mine or smelter in the state of Utah. Any person, firm, or corporation who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor.

Authorized by Con. art. 16, sec. 3.

TAXATION.

CONSTITUTION ARTICLE XIII.

Sec. 4. [**Taxation of mines.**] All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal or other valuable mineral deposits, after purchase thereof from the United States, shall be taxed at the price paid the United States therefor, unless the surface ground, or some part thereof, of such mine or claim, is used for other than mining purposes, and has a separate and independent value for such other purposes; in which case said surface ground, or any part thereof, so used for other than mining purposes, shall be taxed at its value for such other purposes, as provided by law; and all the machinery used in mining, and all property and surface improvements upon or appurtenant to mines and mining claims, which have a value separate and independent of such mines or mining claims, and the net annual proceeds of all mines and mining claims, shall be taxed as provided by law.

The provisions of this section are not self-executing. Where a constitutional provision furnishes no rule for its own enforcement, or where it expressly or impliedly requires legislative action to give effect to the purposes contemplated, it is not self-executing.

Mercur M. Co. v. Spry, 16 U. 222; 52 P. 382.

Centennial-Eureka M. Co. v. Juab Co., 22 U. 395; 62 P. 1024.

The net proceeds of a mine are taxable at the place where the

ores are taken to the surface through the main workings, and, being personal property, should be taxed as other personal property.

Eureka Hill M. Co. v. Eureka, 22 U. 447; 63 P. 654.

Centennial-Eureka M. Co. v. Juab Co., 22 U. 395; 62 P. 1024.

2504. Mines and net proceeds taxable. All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal, or other valuable mineral deposits, after purchase thereof from the United States, shall be taxed at the price paid the United States therefor, unless surface ground, or some part thereof, of such mine or claim is used for other than mining purposes, and has a separate and independent value for such other purposes; in which case said surface ground, or any part thereof, so used for other than mining purposes shall be taxed at its value for such other purposes; and all the machinery used in mining, and all property and surface improvements upon or appurtenant to mines and mining claims, which have a value separate and independent of such mines or mining claims, and the net annual proceeds of all mines and mining claims, and also the net annual proceeds of coke made from coal, or bullion or matte made from ore not taxed, which is deemed a product of the mines, shall be taxed as other personal property. Am'd '03, p. 76.

Taxation of mines under authority of the constitution, and decisions thereunder, Con. art. 13, sec. 4, and note.

Assessment of net proceeds of mines, § § 2566-2573.

List of mining patents to be furnished, § 2553.

2566. Net proceeds of mines. Every person, corporation, or association engaged in mining upon a vein or lode, or placer mining claim, containing any gold, silver, coal or other valuable mineral deposits, must each year, make out a statement of the gross yield of the above named metals or minerals from each mine owned or worked by such person, corporation, or association during the year next preceding the first Monday in January and the value thereof, which statement shall give the fine ounces of gold and silver, and pounds of lead and copper, also the net annual proceeds of coke made from coal, or bullion or matte made from ore not taxed which is deemed a product of mines. Also a statement showing all the machinery used in mining, and all property and surface improvements upon or appurtenant to each mine or mining claim, which have a value separate and independent of all such mines or mining claims owned or worked by such person, corporation or association during the year preceding the first day of January, and the value of the same at 12 o'clock on the first day of January. Such statement must be verified by the oath of such person, or

by the president, secretary, superintendent or managing agent of such corporation or association, who must furnish the same to the State Board of Equalization on or before the second Monday of February in each year. The owner or owners of any mines, dissatisfied with the assessment made upon its net proceeds, or other property, may, between the third Monday in May and the second Monday in June apply to the Board to have the same corrected in any particular, and the Board may correct and increase or lower the assessment made by it to equalize the same with the assessment of other property. (Am'd 1909.)

2567. Id. What to contain. The statement mentioned in the preceding section as to Net Proceeds of Mines must contain a true and correct account of the actual expenditures of money and labor in extracting the ore or mineral from the mine, transporting the same to the mill or reduction works, and the reduction of the ore and the conversion of the same into money, or it equivalent, during the year. (Am'd 1909.)

2568. Id. Expenditures Allowed. In making the statement of the expenditures mentioned in the preceding section there must be allowed all money expended for necessary labor, machinery, and supplies needed and used in the mining operations, for improvements necessary in and about the workings of the mine for reducing the ore, for the construction of mills and reduction works used and operated in connection with the mine, for transporting the ore, and for extracting the metals and minerals therefrom; but the money invested in the mines or improvements during any year, except the year immediately preceding such statement, must not be included therein. Such expenditures shall not include the salaries or any portion thereof of any person or officers not actually engaged in the work of the mine, or personally superintending the management thereof. (Am'd 1909.)

2569. Special assessment book for. The State Board of Equalization must at its meeting commencing on the first Monday in March assess the net proceeds of mines, and before the third Monday in June apportion the total assessment of the net proceeds of mines to the several counties in which the mines are located. The State Board of Equalization must prepare each year a book to be called the "Assessment Book of the Net Proceeds of Mine" in which must be listed the net proceeds of all mines in the state, and in which must be specified, in separate columns, and under the appropriate head:

1. Owner of the mine;
2. Name and description and location of the mine;

3. County in which it is situated;
4. Number of tons extracted during the year;
5. Gross yield in dollars;
6. Actual cost of extracting same from the mine;
7. Actual cost of transportation to place of reduction or sale;
8. Actual cost of reduction or sale;
9. Cost of construction and repairs of mine and reduction work;
10. Net proceeds in dollars;
11. Fine ounces of gold and silver, pounds of lead and copper stated separately. (Am'd 1909.)

2570. Id. Procedure, etc., in assessment of mines, etc. The duties of the State Board of Equalization and County Auditors as to the assessment of the net proceeds of mines, and the property of mines and mining claims, the statement and returns to be made, the equalization thereof, and the official acts, are the same as those mentioned in this chapter for the assessment of railroads, street railroad, car, telegraph, telephone, electric light, pipe line, power, canal, irrigating and express companies. (Am'd 1909.)

2571. Id. Refusal to furnish statement. If any person, corporation, or association engaged in mining, as mentioned herein, refuses or neglects to make and deliver to the State Board of Equalization the statement mentioned in this chapter, the State Board of Equalization must assess and list the property, and assess the Net Proceeds of Mines from the best information and knowledge it can obtain. Such person, corporation or association refusing upon demand to furnish such statement to the State Board of Equalization, shall be subject to a like penalty as is provided in subdivision two, section twenty-five hundred and twenty-one and in section twenty-five hundred and twenty-two, Compiled Laws of Utah, 1907, for failure to furnish statement to a County Assessor. (Am'd 1909.)

2572. Id. Mining improvements, machinery, etc. Not exempt. Nothing in this title contained shall be construed to exempt from taxation the improvements, buildings, erections, structures, or machinery placed upon any mine or mining claim, or used in connection therewith, which have a value separate and independent of such mine or mining claim, or supplies used either in mills, reduction works or mines, but such property must be assessed as provided by law. (Am'd 1909.)

2573. Id. Collection. Lien. The tax mentioned in the preceding sections shall be collected and the payment thereof enforced in the manner provided for the collection and enforcement of other taxes; and every tax is a lien upon the mines or mining claims upon which such mining machinery and improvements are erected, and from which the ores or minerals are extracted, which lien attaches on the first day of January in each year, and the sale thereof for delinquent taxes may be made as provided for the sale of real estate for delinquent taxes. (Am'd 1909.)

MISCELLANEOUS.

3245. Property exempt from execution. The following property is exempt from execution, except as herein otherwise specially provided:

Subdivision 5.

5. The cabin or dwelling of a miner, not exceeding in value the sum of \$500; also his sluices, pipes, hose, windlass, derrick, cars, pumps, and tools not exceeding in value \$500;

4399. Salting mines. Fraudulent assay. Every person who, with intent to cheat, wrong, or defraud, places in or upon any mine or mining claim any ores or specimens of ores, not extracted therefrom, or exhibits any ore or certificate of assay of ore not extracted therefrom, for the purpose of selling any mine or mining claim or interest therein, or who obtains any money or property by any such false pretense or artifice, is guilty of a felony.

Mont. Pen. C., § 942*.

Wrongful taking of ores, § 1536.

4400. Changing samples or assay certificate. Every person who interferes with or in any manner changes samples of ores or bullion produced for sampling, or changes or alters samples or packages of ores or bullion which have been purchased for assaying, or who shall change or alter any certificate of sampling or assaying, with intent to cheat, wrong, or defraud, is guilty of a misdemeanor.

4401. Making or publishing false assay. All assayers, samplers, and dealers in ores are required to keep records containing the amount of ore received by them, the assay value thereof, the amounts paid therefor or advanced thereon, the mine or prospect from which said ore was extracted or the person from whom procured, a general description of the person from whom purchased, together with his name and address and the date of the transaction. Every person who, with in-

tent to cheat, wrong, or defraud, knowingly makes or publishes a false sample of ore or bullion, or who makes, or publishes, or causes to be published a false assay of ore or bullion, or violates any provision of this section, shall be deemed guilty of a misdemeanor. Am'd '07, p. 19.

4356. Larceny from mining claim, etc. Every person who shall feloniously steal, take, and carry away, or attempt to take, steal, and carry away, from any mining claim, tunnel, sluice, under-current, riffle box, or sulphuret machine, any gold dust, amalgam, or quicksilver, the property of another, shall be deemed guilty of larceny.

Cal. Pen. C., § 495s*.

Wrongful taking of ores, arrest, damages, § 1536.

4436. Injuring or defacing U. S. monuments, etc. Every person who wilfully injures, defaces, or removes any signal, monument, building, or appurtenance thereto, placed, erected, or used by persons engaged in the United States or state survey, is guilty of a misdemeanor.

Cal. Pen. C., § 615*.

Removing or defacing other monuments, §§ 1535, 4432, 4446.

Malicious injury of mining notices, etc., § 1535.

2877 Action for waste or trespass—Limitation.

1. An action for liability created by the statute of a foreign state or by the statute of this state other than a penalty or forfeiture under the laws of this state shall be begun within one year;

2. An action for waste or trespass of real property, within three years; **provided**, that when the waste or trespass is committed by means of underground works upon any mining claim, the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting such waste or trespass.



